

DRAINAGE MINUTES  
DISTRICT GRANT #5  
FEBRUARY 26, 2020

The Story County Drainage District Trustees met in the Public Meeting Room in the Story County Administration Building in Nevada, Iowa to consider the annexation of additional lands into Drainage District Grant #5 along with potential repairs and improvements to that district based on recommendations in an Engineer's Report dated March 2018 (on file in the Story County Auditor's Office). Members present were Linda Murken, chair, Lisa Heddens, and Lauris Olson. Also present were Story County Engineer Darren Moon, Civil Attorney Ethan Anderson, Drainage Clerk Scott Wall, Engineers Kent Rode and Tyler Conley from Bolton & Menk, and 29 landowners/interested parties (see attached sign-in sheets).

Murken called the meeting to order at 6:00 p.m.

Olson moved, seconded by Heddens, to approve the amended agenda. Motion carried unanimously (MCU).

Rode gave a brief overview of the history of this project. It began with a request in 2016 for an investigation of the watershed served by Grant #5 from Black Dirt Farms. When the preliminary watershed map indicated there were lands outside the existing district that were surface draining into the district Black Dirt Farms submitted a petition for an Engineer's Report covering the entire district. That report was presented at a public hearing on March 28, 2017. Landowner input gathered at that meeting led to the report being amended to look more closely at the culvert under the Lincoln Highway, an additional main tile draining lands lying north and west of Grant #5 to the southwest, away from the existing facility, and water quality issues. The amended report was presented on March 20, 2018 and was again sent back to the engineer to be amended for more detail on the west tile annexation area and the Lincoln Highway culvert. The final report was presented on December 11, 2018 and the engineer was directed to proceed with plans and specifications for annexation, reclassification, and the west main tile improvement. At a meeting on October 29, 2019 the trustees declined to move forward with the west main tile annexation and improvement in the face of overwhelming landowner opposition. The trustees moved on December 9, 2019 to schedule a public hearing to consider annexation, reclassification, and open ditch repairs in Grant #5 exclusive of the west improvement area leading us to tonight's meeting.

Murken said that before Rode continued she would like to share what had been discussed at a meeting with representatives of the City of Ames at a 3:00 p.m. meeting today concerning their proposed Prairie View Industrial Center. This development is located between the Lincoln Highway and the Union Pacific Railroad right-of-way on land the City of Ames annexed in April of 2017. The Grant #5 main tile runs through the proposed development and the Engineer's Report recommends it be replaced with a larger tile or an open ditch. The city objects to this proposal as it could adversely affect the usefulness of the land for commercial development. The afternoon meeting covered the routing of the city's new sewer and water lines around the existing drainage tile and the impact of any district improvements on the site. It was suggested that if development were allowed to occur before the district made repairs or improvements to the tile the costs of relocating district facilities in Prairie View could be picked up by the buyers of the commercial lots rather than by the drainage district.

Olson said she was concerned that Ames was dictating the project timeline for the Grant #5 project. She had thought the afternoon meeting was solely to discuss the installation of Ames' utilities in Grant #5 but it sounds as if policy had been set regarding the timeline of the drainage project. She asked why she had not been made aware of this.

Murken said both Olson and Heddens knew she would be meeting with Ames officials this afternoon. The meeting was merely to discuss the City's and District's plans for the commercial development area and determine how both entities could work together without infringing on each other's needs. No policies were set.

John Hall, Ames Economic Development Commission, was at the afternoon meeting and reiterated what Murken had said. It was a discussion of what Ames wants to see in Prairie View and the drainage improvements that need to happen in that area. It was his suggestion that the district delay any work between Lincoln Highway and the railroad because if the district redoes its facilities in that area then a commercial developer comes in and relocates those facilities the district landowners could be left paying for something that no longer exists.

Olson repeated that she was still concerned that the afternoon meeting went into more detail than was appropriate and she and everyone at this evening's meeting should know more about what was discussed this afternoon.

Hall said he was fully prepared to share everything that happened at the afternoon meeting. The importance of the earlier meeting was to look at the intersection of the city's and drainage district's needs in this area and how to avoid conflicts between the two.

Murken said those at the afternoon meeting had simply discussed options for what could happen in the area. No decisions were made.

Hall said it was made clear at the afternoon meeting that the focus of this evening's hearing was annexation, not development. Because tonight's agenda included consideration of the improvements the City of Ames had wanted to address those as well.

Olson repeated that she still felt the information from the afternoon meeting should have been shared and that it was important for people to know what was discussed.

Rode reviewed the recommendations of the March 2018 Engineer's Report sans the western annexation and west tile improvement. The main open ditch is silted in, there is damage from erosion, and private tiles entering the ditch are corroded and in need of repairs. The existing tiles are designed to meet a drainage coefficient of 1/16" meaning they can drain an inch of water from the district in 16 days, assuming they are working as designed. This is unlikely due to the age of the facilities. The current standard for modern drainage needs is a coefficient of 1/2". The culvert under the Lincoln Highway is also undersized and high water occasionally overtops the road.

Rode said the report breaks the project into sections. Section 1 is the main open ditch repair. As a repair this is a "shall" under the Code of Iowa. The trustees are required to maintain drainage districts to their original design capacity. Section 2 covers the area between Lincoln Highway and 220<sup>th</sup> Street north of the Union Pacific. The recommendation is to replace the existing tile with a 54" tile or with an extension of the open ditch north to 220<sup>th</sup> St. The report recommends the open ditch because the railroad must bear the costs of a culvert under their right-of-way while the district must pay for any tile under the railroad. Section 3 deals with the tile north of 220<sup>th</sup> and recommends replacing and extending the existing tile with larger tile to meet the 1/2" coefficient and provide better tile access to the north annexation area. Section 4 would add branch tiles to the main north of 220<sup>th</sup> to reduce the distance to a district facility for landowners on the edges of Grant #5. The report also recommends establishing a formal right-of-way along the open ditch for access for repairs. Unlike the open ditch repair the other recommendations in the report are not mandated by law. The trustees can choose to do all, some, or none of them based on what the district landowners desire.

Any drainage improvements can negatively impact existing wetlands. Landowners need to request wetlands determinations from the NRCS but very few have done so to date. Improvements also offer chances to address water quality but methods to improve drainage water quality must be undertaken by individual landowners.

There are about 1,900 acres in the Grant #5 watershed that are not currently on the assessment schedule. These lands should be annexed into Grant #5 as they benefit from the existing facilities. Aerial photos clearly show that there are established surface flows that enter Grant #5 from the proposed north annexation area and eventually intersect the existing main tile. Annexation will require a separate report that shows how the annexed lands benefit. Once the annexation is complete the district will have to be reclassified to redistribute the benefits to drainage for each parcel of land in the district. The current classification schedule dates from 1924 and is probably no longer equitable even without annexations or improvements simply because of changing land use and development. Any new classification will break the district into sub-districts so that landowners only pay for the part of the facilities they use rather than paying for work done anywhere in the district as they do currently.

A landowner asked if the original capacity of the existing open ditch will be sufficient to handle the runoff generated by the proposed improvements.

Rode said most drainage ditches were made deeper than necessary to make it easier for landowners to access them with their private tiles. That is the case in Grant #5 so yes, the existing ditch has adequate capacity to meet a  $\frac{1}{2}$ " drainage coefficient.

A landowner said if the district is improved to the  $\frac{1}{2}$ " coefficient and Ames develops their industrial area with a lot of paved surfaces the runoff from that will be in addition to the water handled carried by the improvement.

Rode said the City's storm water management regulations mandate that runoff from development be equal to what would occur if the land was native prairie. This will reduce runoff from the development to less than it is now.

The landowner referenced development and frequent flooding in Ames along South Duff Avenue. He is not confident in Ames' ability to enforce their storm water regulations.

Rode said Ames has been developing for a long time and he doesn't know how long the current storm water regulations have been in effect.

The landowner asked why the water couldn't go west to the Skunk River.

Rode said diverting water out of a drainage district can lead to a host of other problems, particularly with running it through the lands of people who are not a part of the district.

Madeleine Jensen said there are issues along Airport Road (West 18<sup>th</sup> Street) in Nevada caused by development there. It has increased drainage into Grant #5 and across her property blowing out the tiles along the way. No one has given this problem any attention.

Wall said the area Jensen is talking about is part of Grant #78, a tile district encompassed by Grant #5 which uses the Grant #5 ditch as its outlet. Owners there are in both districts but the area was not part of the focus of the Engineer's Report and the issues there are with the Grant #78 tile, not the Grant #5 ditch.

Jensen asked why no one was talking about draining water north of Grant #5 to the existing stream by Country Landscapes which is where it used to go.

Several people noted that Jensen was talking about the west tile improvement.

Olson said that when landowners objected to the west tile improvement at the last hearing she remembers stating that if they could not work out a solution among themselves the trustees would reassess the west tile proposal.

A landowner asked how long Olson thought the trustees would wait.

Olson said her inclination was to look at the west tile sooner rather than later because every spring there will be water to deal with.

The landowner asked weren't the west tile and the improvements to the existing district related? What happens to the water north of Grant #5 determines what needs to happen with Grant #5.

Olson said it was her understanding that if the trustees revisit the west tile there will have to be a new annexation and classification.

Rode said the west main tile project is dead.

Rode and Conley showed aerial photos from 2011 and 2017 with the existing and proposed boundaries at the north end of Grant #5. The photos show established waterways running from north of the existing district into the district. They do not show evidence of surface drainage to the southwest and the west tile project.

Olson asked how this information impacts the proposed improvements. If the trustees do improvements then an annexation later can they spread the cost of the improvements into the newly annexed area?

Rode said annexation determines who benefits, classification determines how much they benefit.

Ethan Anderson quoted Iowa Code Section 468.119. That is the section that governs annexation. You could do the annexation first but that is not the common practice.

Eric Eide, an attorney representing 4 landowners in Grant #5, said the pertinent Code Sections here are 468.120 and 121 which specify that you have to make three findings prior to an annexation. You can make retroactive assessments if it is determined that the annexed lands benefit from the improvement.

Rode asked if Eide hadn't, at one time, said annexation had to occur before an improvement.

Eide said no he hadn't because if you annex first you are always going to be accused of doing a land grab. If you do the improvement first then you can show it benefits the areas to be annexed and you can annex and levy retroactively.

Rode and Anderson both said that land can be annexed at any time regardless of any improvement if that land can be shown to benefit from the district facilities per Code Section 469.119.

Eide said he is representing four landowners who have property west of 570<sup>th</sup> Avenue. They were opposed to the west tile improvement because of the cost. Now they are being brought into the district to help pay for a repair to a facility that is miles away from their land. He said there is established case law



that says just because water flows a certain direction it does not mean there is a material benefit. The people west of 570<sup>th</sup> Avenue should drain to the west. The trustees need to clean the open ditch as they are statutorily required to do. Eide's clients should not have to pay for the failed west tile engineering fees when they have never been a part of Grant #5. He noted that the trustees do have the ability to make repairs and improvements prior to any annexation then annex additional land and assess it retroactively.

Murken asked Eide to confirm that he is recommending the trustees only do the open ditch cleanout.

Eide said that was correct. If the ditch is cleaned and then the north annexation area is seen to be materially benefiting the trustees can consider an annexation.

Olson asked about a comment Eide had made about his clients' wanting to stay to the west.

Eide said he walked the land with Dennis Smith and there is a huge "tunnel" under the railroad on the Elwell property and there is a tile dumping water there now. This is where the water in the west goes and where it should go. He also learned Black Dirt Farms is currently tiling water out of Grant #5 and directing it to the west. He again referenced 468.120 and 121.

Eric Hill asked why the west tile improvement was scrapped and does Rode agree with that decision.

Rode said he believed the west tile improvement was a good idea but the vast majority of landowners impacted by it objected. He wants to do what is in the best interest of the majority of the landowners in the district. The west tile improvement was initiated because there was originally landowner support for it.

Hill said he is a landowner at the bottom of Grant #5 and he wants the trustees to send the water to the west and away from the open ditch.

Rode said he had shown aerial photos this evening that show the water goes to the existing facilities in Grant #5.

Olson said Rode has evidence that the water flows to the east but the landowners are saying the water does not flow to the east. That discrepancy impacted her decision to support asking the landowners to work it out among themselves.

Rode said there is strong evidence that the water from the north annexation flows in both directions. The majority of it flows southeast into Grant #5 but during large storm events some of it overtops a small rise and flows under 570<sup>th</sup> to the southwest. This is why he thought it was reasonable to have a west tile. He pointed out that not everyone will have the same benefit from the existing facilities. If some of your water flows to the west you will have a reduction. If some of your water is tiled to the west you will have a reduction.

Hill said so if he has more flooding on his land because of the ditch does he get a reduction. He has 300 acres that are wet and now Rode is proposing to put more water in the ditch.

Rode said he is not putting more water in the ditch. He is proposing to drain the watershed more efficiently through the improvement but that does not change the amount of water that falls on Grant #5. It will change the rate and manner that the water is drained but it is the same water.

Hill said the water will now drain faster.

Rode said not necessarily. The water still needs to go through the same soil profile to reach the tile. Once it reaches the tile it will be carried away more quickly. Rode said there is a common belief that tiles increase flooding but in a study done by the University of Iowa in the Clear Creek Watershed this was not the case.

Howard Hill, Eric's father, said there is too much water in the ditch now. He believes the trustees should revisit the west tile improvement because the ditch already carries too much water. The west tile improvement was stopped because people voted against it – who voted?

Murken said the trustees voted not to take any action on the west tile improvement when over 95% of the landowners who would pay for it petitioned against it.

Howard Hill said those landowners don't pay anything for drainage now. What kind of response did the trustees expect? Hill said directing the water from the north towards the southwest is not putting that water on someone else because it already goes that way.

Rode said there is a private tile in the west annexation area now that outlets near the railroad on the Elwell property. The same landowners that supported increasing the capacity of the existing tile objected to the improvement when they saw the cost.

Eric Hill said the trustees need to revisit the west tile improvement. If that were put in place every farmer up there will tie into it which will divert a lot of the water in the north away from the existing Grant #5 facilities. The people at the end of the open ditch are suffering because the people north of Grant #5 are not paying their share. The people in the north are going to have to deal with their water issues sometime. They might as well do it in a way that benefits the greatest number of people.

Madeleine Jensen said Ames is creating the problems with their development along 13<sup>th</sup> Street dumping water into Grant #5 instead of sending it past Country Landscapes to the Skunk River.

Olson said she thought there had been a consistent view over the past 3 years that I-35 was preventing water from draining to the west.

Dane Schumann, an attorney representing Ron Jensen and Back Dirt Farms, said his clients do not believe proceeding with the annexation makes sense if the west tile improvement is not done. If the west tile is not built his clients do not believe the open ditch needs to be repaired.

Olson asked if Schumann was really saying that the open ditch should not be repaired.

Schumann said there are problems with the ditch but they are, in large part, due to the water from the north. If nothing is done to redirect some of that water any repairs to the ditch will be fleeting at best.

Olson said the law is quite clear that the trustees have to repair the open ditch. Schumann is the first person she can remember saying don't repair the ditch because it isn't worth it.

Schumann said his letter suggests that the trustees go back and complete the west annexation and west tile improvement before addressing the issues in the existing district. If the north and west areas are not addressed we'll be back here in 7 or 8 years to repair the ditch again because the underlying problems have not been addressed.

Murken asked what Schumann's clients had originally wanted to see done in Grant #5.

Schumann replied that his clients had requested a comprehensive review of the district. The fact that the trustees in December 2018 were going to look at an improvement in the west first then see how that impacts the open ditch shows that was the logical order of how things should proceed according to the engineer's report.

Roger Engstrom has land in Grant #5 and in the north annexation area and said the open ditch must be repaired. It was last done in the early 1990's and was not done well. If the ditch is cleaned again, slowing the flow of water and silt needs to be taken into account. The State of Iowa allows cropland to lose 5 tons of topsoil per acre per year. Unless that is changed first, no cleanout of the open ditch will take long to silt in again.

Murken said she couldn't agree more but the trustees are also limited by the Code in how much they can do. She noted the engineering report includes a section on water quality and gives some actions individual landowners can take to improve the water coming off their land.

Engstrom said concerning the west tile project there is a good outlet under the railroad north of Barilla and a tile improvement there would be beneficial if done the right way. He objected to the west tile proposal because he didn't believe it was sufficient. The existing 18" private tile needs to be improved but it needs to be done in the right way.

Hall said the City of Ames and the Ames Economic Development Commission object to the proposed improvements between Lincoln Highway and the Union Pacific. It is a given that there will be industrial development there. New development will have to account for storm water runoff under a plan Ames put in place in 2014 as well as water coming from the north and will relocate district facilities as necessary. If the trustees move forward with an improvement then a developer comes in and relocates that improvement the district landowners will have "wasted" their money on something that no longer exists. In fact, many of them could be making payments for 10-20 years on a non-existent improvement.

Olson said Ames has known about the drainage district's plans for at least a year and a half. If the trustees decide to do the improvement is the city going to stop their infrastructure project? Whose money is being wasted – the landowners? As a resident of Ames she is a little concerned that the city will be placing infrastructure that may have to be relocated for a drainage district improvement.

Nate Willey, Ames Engineer, said the City is moving forward with installation of utilities to serve the industrial area. They are taking bids on the work next Wednesday and have designed the project to avoid the existing district tile along Lincoln Highway. If the district does any work in Prairie View and developers then have to make changes to that work the money spent on those facilities was wasted.

Olson said she didn't understand what has been wasted. If the developers have to make changes to district infrastructure they will do it at their cost and it will not incur more costs for the district.

Hall said if the district spends, for instance, \$400,000 on an open ditch between the railroad and Lincoln Highway and a developer comes in 18 months later to build a major facility and redirects that open ditch landowners will be paying for up to 20 years for a facility that does not exist.

Olson said the district has to make repairs or improvements to facilitate the flow of water. If a business comes in and wants a piece of land where the district facility lies they have to pay to move that facility. The district landowners only have to pay once.

Murken said what Hall was trying to say is that if the district waits and developers re-route the existing district facility the district landowners won't have to pay for that at all.

Olson asked if that was for the entire improvement or just part of it.

Hall said this is specifically for the area between Lincoln Highway and the railroad.

Olson asked if that meant the trustees had to put off everything else in Grant #5.

Hall said he is not addressing everything in Grant #5, just the section of the report dealing with the area between Lincoln Highway and 220<sup>th</sup> Street and more specifically the part of that area south of the railroad. He is suggesting that if the folks in this room exercise a little patience they could realize some savings over deciding to go ahead with improvements now.

Olson said that in 2018 everyone was saying the Industrial Park was really going to pop but that still has not happened. How long do the trustees have to wait for something to happen that may not happen?

Murken said not only was the city aware that Grant #5 was looking at potential improvements but the trustees knew that Prairie View was coming.

Hall said 18 months ago the trustees took no action on improvements. How long is Ames to wait for something to happen?

Olson asked how long it would take for the city to redo its plans and rebid the infrastructure project if the trustees vote to proceed with an improvement tonight.

Willey said the current project, if it begins this spring, will continue well into next spring so it is a long duration project. He can't give a timeline for changes without knowing what they might be.

Hall said it wasn't fair to put Willey on the spot at this time. In talking with City Engineer Tracy Warner Hall's understanding is that if the district trustees go forward with an improvement the city's next step would be to consult with their attorney.

Clarence Meyers said if the trustees don't put the ditch in now, developers will come in and do whatever they please and it will be too late for the district. He also believes the trustees should annex the west area and improve the private tile there (the west tile improvement). The existing private tile is proof that water runs in that direction.

Murken said the main district tile already crosses the industrial development so the trustees do have jurisdiction over what happens there.

Engstrom said the west tile improvement should be revisited but the new tile needs to run alongside the existing private tile, not along 570<sup>th</sup> Avenue as the engineering report recommended. There is too much infrastructure along the road now plus that location is at a higher elevation than the existing tile.

Dave Damerell asked if he was correct in thinking someone had said the trustees will still consider the west tile improvement.

Olson said she would like to revisit the west tile project if, after a certain amount of time, the landowners in that area are not making any progress on draining the area privately but she is just one of three trustees.

Damerell asked if the trustees could commit to revisiting the west tile improvement after a certain amount of time has passed.

Heddens asked for clarification. Was Olson suggesting that she had said in October 2019 that the trustees would reconsider the west tile if the landowners in the area had made no progress in resolving their drainage issues?

Olson said that was correct.

Murken said no timeline was set. We have no objective data to justify revisiting the west tile project.

Damerell said he was just hoping the board would commit to re-examining the west tile and set a deadline for that re-examination. If repairs are done now and an annexation is done in the future can the cost of those repairs be reimbursed based on the future annexation?

Wall said there is a section in the Code stating if land is annexed into a district that land can be assessed for all work back to the establishment of the district. Hamilton County does this and did it recently when lands in northern Story County were annexed into an existing Hamilton County district. Hamilton County billed those lands for all levies back the establishment of the district. The rationale behind the code section is that the annexed lands were always benefitting from the district before they were annexed.

Olson said what she understands Damerell to be asking is that the trustees hold a future meeting relating specifically to the west annexation and improvement.

Rode said he wasn't aware of anything having changed since the west tile improvement was stopped by overwhelming objections to it. He recommended that the trustees not revisit that project without a large number of landowners in that area petitioning for it. The decisions made tonight can be made without necessarily impacting the west main tile area. The petitioners should be the people in the north and west annexation areas as they are the ones who would directly benefit from the improvement.

A landowner asked wouldn't the people in the existing district benefit from the west tile improvement. Shouldn't they be allowed to petition for that project as well?

Rode said the people in the east already have facilities they can tie into. They will not be able to tie into a west tile.

The landowner said the west tile will move water away from the existing district so there is a benefit.

Rode said it will move some of the water, not all of it. There will still be water from the north draining into the existing district.

Randy Collings said the east main tile would benefit from a west main tile. He is on the east tile/open ditch and should be included in the petition as he would absolutely benefit from a west tile.

Anderson said landowners can file a petition if they want to create a new district or to be annexed into an existing district and get a new tile but that hasn't happened. The trustees have an Engineer's Report now – it is time to move forward with the recommendations in that report. Certainly there will be dissension no matter what the trustees do.

Olson asked if the trustees were bound by the limitations of the motion made in December 2019 since this evening's agenda includes items that were not in the motion.



Anderson said landowners should be the ones to initiate reopening the west tile project. If the trustees initiate a new look at the west tile Mr. Eide will be back with his clients to oppose it.

Eide said Olson's question about the agenda was a valid one. The mailed notice of hearing referred to specific items and any landowner reading it would assume those items are all that would be discussed this evening. He doesn't think the trustees have jurisdiction to go beyond what was in the letter.

Murken asked what the letter stated the meeting would include. A copy of the letter revealed that it did include the enlargement and extension of the main district tile as items for discussion.

Anderson recommended that the trustees move forward with annexation and reclassification. He does not recommend that the trustees act on any repair or improvement tonight. The open ditch repair can be considered at a future hearing, even as soon as the annexation hearing.

Murken asked if the trustees request an annexation report are they committed to the annexation.

Anderson said no, once the trustees have the report they will make the decision on whether to annex.

Rode said any reclassification at this point will be preliminary. A full reclassification should come only after any improvements are approved.

Jim Conner of Conner Farms has land in the existing district. The trustees need to at least clean and maintain the open ditch and enlarge the culvert under Lincoln Highway. He is in favor of annexing any land that can be proven to benefit from the Grant #5 facilities. The landowners who oppose any action need to look at this as an investment in their property, not just an expense.

Wall said he had received eight objections (attached) that should be noted for the record. In addition to the letter from Schumann representing Jensen and Black Dirt Farms we received four objections from Eric Eide's clients and three from other landowners who are opposed to annexation. Those objectors are El Sargent and Associates, Donna and Joyce Coe (Hubbard Harvest), Liz and Jim Crimmins, Martha Clifford, Mark Kenney, Betty Koos, and Country Sunrise Properties, LLC.

Cindy Hildebrand submitted a ninth objection (attached), to annexation of her land.

Sondra Childs-Smith asked what, exactly, the trustees were trying to do today? She suggested the trustees visit the proposed north annexation area in person before taking further action. The previous supervisors did do that and the current supervisors need to get boots on the ground before they go too much farther.

Madeleine Jensen said Nevada should be directing their water east of Airport Road (West 18<sup>th</sup> Street) to West Indian Creek, not into Grant #5. The City of Nevada took the easy way out instead of the right way and the people in Grant #5 are paying for it.

Murken said she sympathized with Jensen's concerns but that issue is not a part of this evening's agenda nor is it addressed by the Engineer's Report.

Olson asked what a "resolution of necessity" for annexation is.

Anderson said a resolution of necessity is simply a resolution, like any other resolution, stating that there is a benefit to the lands being annexed from that district's facilities. It is required in the Code as part of the process of annexation and will be considered at the same time as the annexation report. Tonight the trustees need to direct the engineer to prepare an annexation report and reclassification. The resolution of

necessity will be made as part of the process to proceed with the annexation once that report has been submitted.

Rode said he will prepare an annexation report to present to the trustees. Much of the work has been done already so the report will be ready in 2-3 weeks. Once the trustees accept the report they will set a date for a public hearing to consider the annexation not less than 40 days from the date of acceptance.

Murken asked about the part of the north annexation that encroaches on another drainage district. If they are annexed into Grant #5 what effect does that have on the other district?

Rode said those properties would remain in the other district in addition to being in Grant #5. That is not uncommon.

Heddens said she believed it was time to move forward with this project.

Olson asked if there could be more at an annexation hearing than just the annexation.

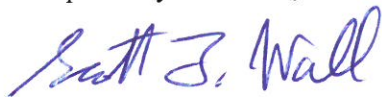
Rode said other items can be considered as well such as the repair of the open ditch. The annexation should be dealt with first though. He recommends that the open ditch repair be on the agenda as well as any improvements the trustees may want to consider.

Olson moved, seconded by Heddens, to direct Bolton & Menk, Inc. to proceed with preparation of the annexation report and the resolution of necessity for said annexation. MCU.

Murken said the agenda for the next hearing should also include the main open ditch repair and acquisition of a formal right-of-way along the open ditch.

Heddens moved, seconded by Olson, to adjourn. MCU. Meeting adjourned at 8:55 p.m.

Respectfully submitted,



Scott T. Wall

## February 26, 2020

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Attorney  
for Ron Jones  
Black Dirt Farm

**DRAINAGE ATTENDANCE SHEET**  
**Joint Drainage District Grant #5**  
**February 26, 2020**

Name	Address	Owner/Tenant
JIM CONNER	COLO	OWNER
Eric Eide	Ames	attorney
Martha Clifford	Ames	owner
Holly Schnur	Nevada	- Verbio employee
Greg Faith	Nevada	- Verbio employee
Dennis P. Smith	Ames	owner
Sandra Childs Smith	Ames	owner
HOWARD HILL	CAMBRIDGE	OWNER
Sally Jensen	Nevada	OWNER
James Schaack	Nevada	Owner
Roger Engstrom	Ames	owner
Jeff [Signature]	Boulder	owner
Cindy Hildebrand	Ames	owner
Randy Brekke	Ames	Owner
David & Jana Ballantyne	Nevada	Owner.





WANDRO & ASSOCIATES, P.C.  
ATTORNEYS AT LAW

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Jennifer H. De Kock\*  
Terry L. Gibson  
Alison F. Kanne\*  
Brian J. Lalor  
Dane J. Schumann  
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Steven P. Wandro  
Grant A. Woodard

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February 26, 2020

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Story County Administration  
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FILED  
2020 FEB 26 PM 5:42  
STORY COUNTY AUDITOR

OBJECTIONS TO ENGINEER'S REPORT AND DISCONTINUATION OF ANNEXATION AND IMPROVEMENTS

Dear Grant #5 Trustees and Staff:

This office represents Jensen Farms (Ron Jensen) and Black Dirt Farms, LLC, two landowners within Drainage District Grant #5. Please consider this letter my clients' objections to the Story County Board of Supervisors', in their capacity as Drainage District Grant #5 Watershed trustees, proposal for implementing the amended engineer's report.

The amended engineer's report dated February 27, 2018 for Grant #5 a relatively large and comprehensive scope of work to address many outstanding issues pertaining to the district. As you know, the trustees began the annexation process of lands lying west of Grant #5 in December 2018. The trustees also initiated the process of implementing tile improvements in these western lands upon their annexation into the district. Before and after those processes began, the trustees incurred over \$225,000 worth of engineering fees with Bolton & Menk. At the October 29, 2019 trustees meeting, the trustees abruptly ended consideration of western improvements—saddling the existing Grant #5 landowners with all the engineering fees for an annexation and improvements that will no longer occur. Now, the trustees are considering a project that will be wasteful if the western lands and improvements are not completed. My client now objects to being assessed those engineering fees; the trustees' decision to stop the west annexation and improvements; and the trustees proceeding with the remainder of the engineering report on five grounds:

- 1) If the trustees proceed with remainder of the engineering report without annexing the west lands and making improvements there, much of the remaining work will be ineffective and wasteful. If the open ditch is repaired, for example, it will simply fall back into disrepair without proper drainage infrastructure within the west lands that drain a lot of water into it. Page 19 of the amended engineer's report says "[t]hese [west] acres benefit by draining to the open ditch and/or the tile system and should share in the cost of the proposed and future maintenance work of their respective



facilities.” The lack of drainage infrastructure in those lands causes the open ditch to silt closed and contributes to many of the issues that present themselves for repair.<sup>1</sup> Repairing the open ditch will cost around \$500,000. Undertaking such an expensive project without addressing the underlying drainage issues—insufficient drainage infrastructure in the west lands—is not something my clients will support. Also, land north of the Jensen property drains water into Grant #5 and outlets to the west. Again, doing nothing with the west lands fails to address the real issues motivating this project.

- 2) My clients also object to any improvements the board is considering to the open ditch. Much of what’s outlined in the engineering report and appears to constitute an improvement. Deepening the ditches capacity, for example, is an improvement and not a repair. Landowners are entitled to remonstrance rights for improvements, and my clients wish to remonstrate against improvements to the ditch, particularly if drainage improvements are not made to the west.
- 3) The trustees’ discontinuation of the annexation and improvement process was unlawful and unnecessary. The western lands were effectively annexed into the district when the trustees accepted the annexation report at the September 10, 2019 meeting. Iowa Code 468.119 and 468.120 contemplates acceptance of the engineer’s report as sufficient for an annexation. And though western landowners appeared to have remonstrated against both the annexation and the proposed improvements, Chapter 468 provides no remonstrance rights to annexation. Indeed, the October 29 minutes demonstrate the western landowners’ attorney, Eric Eide, did not object to the annexation—only the proposed improvements.<sup>2</sup> The trustees’ discontinuation of the annexation process was, therefore, unlawful and unnecessary.
- 4) Alternatively, if the western lands were not annexed into the district, the prior trustees proceeding with the engineer’s report without annexing them first was misguided. That’s true for two reasons. First, as Mr. Eide said in October, proceeding with western lands’ proposed improvements without first annexing them effectively deprived those landowners of remonstrance rights because Chapter 468 provides remonstrance rights against proposed improvements only to landowners *within* the district.<sup>3</sup> Second,

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<sup>1</sup>We understand the open ditch has undergone relatively frequent repairs in the last few decades. We believe that trend will continue if the west lands are not annexed into the district and provided with proper drainage infrastructure.

<sup>2</sup> Page two of the October 29 minutes summarized Mr. Eide’s comment and it says, in part: “The big problem here is that the project was done before the annexation. If land should be annexed, fine, but it is inconceivable that 2,000 acres were missed when Grant #5 was established.”

<sup>3</sup> Iowa Code 468.119(4) provides: “The right of remonstrance, as provided under section 468.28, does not apply to owners of lands being involuntarily annexed to an established district.” 458.126(4)(e) provides, in relevant part: “a majority of the landowners, owning in the aggregate more than seventy percent of the total land *in the district*, may

considering remonstrances against proposed improvements—as the trustees did—only from landowners within the proposed annexation deprives existing landowners of their rights to *support* the improvements. If the west lands had been annexed and the trustees applied the code properly, it appears the remonstrances would’ve been insufficient stop the project when considered against the preexisting Grant #5 landowners who supported it. In summary, the prior trustees made a mistake proceeding as they did without an annexation first. And that mistake guaranteed the remedy would be worse than the mistake itself.

- 5) Assessing the Jensen Farms and Black Dirt for the engineering fees incurred for the western land’s annexation and improvements are in excess of any benefits to my clients’ property.

According to the published minutes, the trustees appeared to have formally ended only the consideration of the west tile improvements to Grant #5 at the October 29, 2019 meeting. My clients propose the trustees proceed with making the classification and assessment of benefits to the west lands because they were effectively annexed over the course of 2019. The trustees should then proceed to consider the proposed improvements to those lands, and they should consider whatever remonstrances those improvements generate under the correct analysis in Chapter 468. Whatever happens thereafter, though, the engineering fees incurred should then be assessed more broadly across all land that then lies within the district. If the trustees will not proceed with annexing the west lands and making improvements there, then my clients do not support the trustees proceeding with the engineering report any further.

We look forward to presenting these objections at the Grant #5 trustees meeting on February 26, 2019. We hope to amicably resolve this matter with the trustees and other landowners at that meeting and on any subsequent occasions that present themselves. Please contact me with any questions or comments you may have.

Sincerely,

Dane Schumann  
Attorney at Law  
2501 Grand Avenue, Suite B  
Des Moines, Iowa 50312  
[dschumann@2501grand.com](mailto:dschumann@2501grand.com)  
Phone: 515-281-1475

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file a written remonstrance against the proposed improvement, at or before the date set for hearing on the proposed improvement as provided in paragraph “c”, with the county auditor . . . .” (Emphasis added)

## Scott T. Wall

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**From:** Chuck Cutler <ccutler@cutlerfirm.com>  
**Sent:** Wednesday, February 26, 2020 5:41 PM  
**To:** Scott T. Wall  
**Subject:** El Sargent and Associates -Objection to Annexation

[External Sender - Please Use Caution]  
Scott,

I am one of the managers of El Sargent and Associates, LLC. On behalf of the company I want to let the trustees know that we object to the annexation of our ground into the drainage district. I understand that this is being considered tonight.

We object to the annexation for all of the reasons set forth in our last objection and incorporate the contents of that letter into this objection

*Charles E. Cutler, Attorney at Law*



1307 50th Street  
West Des Moines, IA 50266  
Tel: 515-223-6600  
Fax: 515-223-6787  
[www.CutlerFirm.com](http://www.CutlerFirm.com)

This e-mail, including attachments, is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521, is confidential, and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, and then please delete it. Thank you.

FILED  
2020 FEB 26 PM 5:42  
STORY COUNTY AUDITOR

January 28, 2020

To: Story County Drainage District Trustees

As Managers of Hubbard Harvest LLC which owns land in Drainage District Grant #5 Watershed adjacent to Lincoln Highway on the north side, we would like to inform the trustees that we do not support the proposed improvements not required by the Iowa Code, with the following exception.

Also feel that the proposed annexations not required by Code are also not in our best interest.

Surface water drainage from the North of our land is too large for the existing size of the culvert pipe under Lincoln Highway this causes flooding of our land as the water backs up trying to get thru.

We would like to include the enlargement of the culvert pipe under Lincoln Highway to the repairs. This would allow the water traveling from the north to get to the repaired ditch south of Lincoln Way Highway. Thus, allowing those north of Lincoln way to benefit from the repairs of the ditch south of Lincoln highway.

We do support the repair of the existing ditch south of Lincoln Highway as required by law.

If the culvert size improvement is done, we feel the open ditch across our land will not require improvements. In addition this area is being looked at for commercial development which suggests that the money to improve this part of the open ditch is not a wise use of money for the district.

We request that this letter be read at next district drainage meeting Feb 26, 2020 since we will not be able to attend in person.

Hubbard Harvest LLC

Co-manager

Donna Coe

1/28/2020

Donna Coe

Co-manager

Joyce Cofer

1/28/2020

Joyce Cofer

STORY COUNTY AUDITOR

20 JAN 29 AM 9:06

FILED



To the Story County Drainage District Trustees,

I am writing this letter to express both my husband's and I objection to being annexed into Drainage District Grant #5.

We live at 19841 570<sup>th</sup> Ave on a small acreage, around 3.5 acres, and were also involved with the previous annexation proposal for the western area. Evidently, we fall into both areas. Our property is completely covered with grass, plants, and plenty of trees. All surfaces are covered with plant material, minus the areas covered by the house, driveway, and outbuildings. The reason I am mentioning this is that bare ground without any vegetation cover has lower absorption rates so any water that falls on it is likely to pick up sediment and travel over longer distances. This takes the sediment and anything else it picks up to the drainage areas and over time builds up to require maintenance. Considering further, trees are a major factor in water absorption and reducing runoff in urban and rural environments. Not only do the canopies capture rain for future evapotranspiration, their roots absorb massive amounts of water and create conditions in the soil to allow for greater water absorption, reducing runoff. According to [extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds](http://extension.psu.edu/the-role-of-trees-and-forests-in-healthy-watersheds), average interception of rainfall by tree canopies is 10-40%, a single deciduous tree can intercept 500 to 760 gallons per year, and an evergreen can intercept up to 4,000 gallons per year. Our soils also have good absorption rates. This is proven by the recent installation of a septic system in our backyard and because of the higher absorption rates of our soil, we were able to install the least expensive type with laterals. Additionally, we have a small swale in our backyard that actually captures water that would be running to the west towards the interstate from our own property and the fields to the north of us. At the most, water sits there for a few days and then is gone.

Point from the above information: we contribute very little to sediment pollution in drainage tiles or waterways and in fact capture much of the water on our own property due to the many trees, high absorption rate of our soil, and the swale in our backyard.

According to the Iowa State Association of County Auditors, "drainage districts have been established for the drainage of surface waters from agricultural and other lands for the protection of said lands from overflow when said protection is a public benefit or is conducive to public health, convenience, and welfare." I fail to see how we would qualify in any way for this drainage district. We are not using our land agriculturally. The likelihood that anyone would ever use our little bit of land for agriculture is low, considering all of the buildings, septic, gas lines, electric lines, trees, and buildings that would have to be torn down and removed to farm the property. We aren't gaining any benefit from the drainage district because the original builder of our house, in their wisdom, built the house on top of a slight hill. They didn't try to force land that was naturally wet to become dry. I would like to point out that most of the farmland that is requiring drainage is because we are trying to make land that would naturally be low, wet areas to become dry enough to farm. I don't have anything against farming and know that it is needed and important, but I fail to see why I should be required to financially support a system that I am not benefiting from either physically or financially.

In conclusion, both my husband and I are thoroughly opposed to being annexed into Drainage District Grant #5. I believe that if someone wants to drain water away from their land so that they can use it for whatever purpose, farming or otherwise, that it is their responsibility to do so, not their neighbor's.

Sincerely,  
Liz and Jim Crimmins  
19841 570<sup>th</sup> Ave

*Liz & Jim Crimmins*

STORY COUNTY AUDITOR

2020 FEB 24 PM 12:28

FILED





**OBJECTION TO ANNEXATION**

(Story County Drainage District No. 5)

To: Story County Auditor  
Attn: Scott Wall, drainage clerk  
900 6<sup>th</sup> Street  
Nevada, IA 50201

STORY COUNTY AUDITOR

20 FEB 26 AM 9:00

FILED

The undersigned, as a landowner in the area proposed to be annexed into Drainage District No. 5 pursuant to that Engineer's Report dated September 10, 2019, hereby OBJECTS to the annexation. The reasons for this objection include:

1. The Annexation Report for Drainage District No. 5 dated September 10, 2019 by Bolton & Menk (the "*Annexation Report*") does not satisfy the requirements of Iowa Code Section §468.119 in that:
  - it does not contain the required surveys, profiles and plats to show the relative elevation and condition of our land with reference to the existing land and facilities in Drainage District No. 5;
  - the only alleged benefit to our land set forth in the Report is that surface and/or subsurface drainage may discharge from our land through the facilities of Drainage District No. 5. All of these facilities are miles from our property. Long-established Iowa case law establishes that such mere "*discharge*" does not in and of itself demonstrate a requisite "*material benefit*" from the existing district. The undersigned's land does not materially benefit from the existing Drainage District No. 5 facilities.
2. The proposed annexation is not for the public good, but is designed merely to get more assessable land to pay for needed repairs to the existing Drainage District No. 5 facilities.

**WHEREFORE**, the undersigned respectfully requests that proposed annexation of the land owned by the undersigned in Milford Township be denied and the proceedings dismissed.

By: Martha Clifford 2/20/2020  
Martha Clifford Date

FILED

20 FEB 26 AM 9:00

STORY COUNTY AUDITOR

**OBJECTION TO ANNEXATION**

(Story County Drainage District No. 5)

To: Story County Auditor  
Attn: Scott Wall, drainage clerk  
900 6<sup>th</sup> Street  
Nevada, IA 50201

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2. The proposed annexation is not for the public good, but is designed merely to get more assessable land to pay for needed repairs to the existing Drainage District No. 5 facilities.

**WHEREFORE**, the undersigned respectfully requests that proposed annexation of the land owned by the undersigned in Milford Township be denied and the proceedings dismissed.

By:

  
Mark J. Kenney

2/24/2020  
Date

**OBJECTION TO ANNEXATION**

(Story County Drainage District No. 5)

To: Story County Auditor  
Attn: Scott Wall, drainage clerk  
900 6<sup>th</sup> Street  
Nevada, IA 50201

STORY COUNTY AUDITOR

20 FEB 26 AM 9:00

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2. The proposed annexation is not for the public good, but is designed merely to get more assessable land to pay for needed repairs to the existing Drainage District No. 5 facilities.

WHEREFORE, the undersigned respectfully requests that proposed annexation of the land owned by the undersigned in Milford Township be denied and the proceedings dismissed.

By: Betty J. Koos      2-24-2020  
Betty J. Koos      Date



**OBJECTION TO ANNEXATION**

(Story County Drainage District No. 5)

To: Story County Auditor  
Attn: Scott Wall, drainage clerk  
900 6<sup>th</sup> Street  
Nevada, IA 50201

20 FEB 26 AM 9:00  
STORY COUNTY AUDITOR

FILED

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  - the only alleged benefit to our land set forth in the Report is that surface and/or subsurface drainage may discharge from our land through the facilities of Drainage District No. 5. All of these facilities are miles from our property. Long-established Iowa case law establishes that such mere "discharge" does not in and of itself demonstrate a requisite "material benefit" from the existing district. The undersigneds' land does not materially benefit from the existing Drainage District No. 5 facilities.
2. The proposed annexation is not for the public good, but is designed merely to get more assessable land to pay for needed repairs to the existing Drainage District No. 5 facilities.

WHEREFORE, the undersigned respectfully requests that proposed annexation of the land owned by the undersigned in Milford Township be denied and the proceedings dismissed.

Country Sunrise Properties, LLC

By: Phil Schumer 2-20-2020  
Phil Schumer, Treasurer Date



Hi Scott Wall,

Thank you very much for your time and information earlier today. Per our conversation, I'm writing this message to make sure that my husband and I will be confirmed as being on record at or before the February 26th meeting regarding Grant Ditch #5.

We do not want our land to be annexed into the Grant #5 Drainage District. Our land is not appropriate for annexation into the district because it is under a permanent conservation easement with the Iowa Natural Heritage Foundation, which means it will and must always be managed as a natural area.

We would not benefit economically in any way if our land were annexed into the district. And being in the district could cause serious damage if our land were ever to be the site of soil dumping or tree debris disposal that resulted from ditch management or ditch cleanouts. If our land were to be damaged in that way, that could violate our conservation easement terms.

In addition, our land is at the southern tip of Grant #5. That means that any water that drains from the portion of our land that is being proposed for annexation then travels through much more of our land as it leaves the district.

Our property receives all the water that moves through the district, and much of that land is in rowcrops. By contrast, all of our land is in permanent vegetation. That means my husband and I are doing what we can to ensure that when drainage water leaves our land, that water is at least as clean as it was when it entered our land, and possibly cleaner.

Thank you again for your assistance, and best wishes --

Cindy

Cindy Hildebrand  
Roger Maddux  
[grantridge@aol.com](mailto:grantridge@aol.com)  
57439 250th St.  
Ames, IA 50010  
515-232-3807

FILED  
2020 FEB 26 PM 9:23  
STORY COUNTY AUDITOR

RECEIVED FEB 25 1953